

REMARKS

Applicants respectfully request reconsideration in view of the amendment and following remarks. Support for amended claim 1 can be found in the specification at page 3, lines 5 to 8: "dilution"; "50 mmol/L" and page 4, lines 10 f.f. and claim 4: "wetting agent is non-ionic". Support for newly added claim 9, for example, can be found, on page 8, lines 10-19 of the specification. Support for newly added claim 10, for example, can be found on page 9, lines 14-16 of the specification. Support for newly added claim 11, for example, can be found on page 9, lines 1-3 of the specification. Support for newly added claim 12, for example, can be found on page 12, lines 2-3 of the specification. Support for newly added claim 13, for example, can be found on page 14, lines 12-13 of the specification. Support for newly added claim 14, for example, can be found in example 5 and page 34, lines 9-12, page 2, lines 19-28 and page 3, lines 15-19 of the specification. New independent claims 15 and 16 are based on pending claim 1 and the references discussed above. Support for newly added claims 17 and 18 can be found in the original claim 4.

The applicants have three independent claims (claims 1, 15 and 16).

Claims 1, 3 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Twist U.S. Patent No. 5,741,631 ("Twist"). Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Papai U.S. Patent No. 5,891,609 ("Papai"). The applicants respectfully traverse these rejections.

The applicants request that it would be preferred to get all references that are thought to be still relevant for the present claims - should there be any - at a time to see the whole picture (see page 3, paragraph no. V of the

Office Action).

In paragraph III A of the Office Action at page 5, the applicants respectfully disagree with the Examiner and believe that the meaning of "color developer", "antioxidant" and "wetting agent" are sufficiently clear from the description.

REJECTION OVER TWIST

Claims 1, 3 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Twist. Twist discloses in Example 1, Table 2 a ready-to-use developer solution containing 4.5 g/L CD3 and a ready-to-use developer replenisher containing 10.03 g/L CD3. CD3 is 4-N-ethyl-N-(b-methanesulphonamidoethyl)-o-toluidine sesquisulphate (see also page 3, lines 28 to 29 of Twist). The applicants have informed the undersign that CD-3 has a molecular weight of 418.5. Twist discloses ready-to-use developing solutions containing 0.011 mol/L (0.1 g/L / 418.5 moles/g) and 0.024 mol/L (10.03 g/L / 418.5 moles/g) of the colour developer substance CD3 respectively. This converts to 11 and 24 mmol/L respectively. This is different to the present invention, as the applicants claim concentrates instead of ready-to-use solutions and the concentrates of the present invention contains over double, at least 50 mmol of a colour developer substance per L.

The feature "concentrate" is more than intended use language and is a patentable feature in the claims, because it has to be diluted with water in order to produce a ready-to-use solution. This is a clear distinction over a ready-to-use solution, irrespective whether the ready-to-use solution is a tank solution or a replenisher solution. A concentrate that is pre-prepared, usually stored in a plastics bottle and diluted just before use has different demands than a ready-to-use solution, e.g. with respect of the storage stability at low temperatures or the discharge behavior

by draining off. Therefore a concentrate according to the present invention is patentably different over a ready-to-use solution. In addition, the independent claims relate to a concentrate containing at least 50 mmol of a colour developer substance per L, to make this difference further clear. Therefore, the present invention is novel over Twist and this rejection should be withdrawn.

REJECTION OVER PAPAI

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Papai. As the Examiner has correctly recognized by not rejecting the applicants' claim 4, Papai does not teach using the non-ionic wetting agent. The teaching of Papai is related to a one-part multi-phase liquid concentrated colour developer replenisher, that according to column 10, lines 31 to 33 comprises a solid precipitate of an optical brightener, if such a compound is contained in the concentrate. Papai discloses that a wetting agent can be present in the concentrate, see e.g. column 2, lines 39 to 42, column 4, lines 3 to 9, column 7, lines 35 to 40 and column 7, lines 62 to column 8, line 26. On column 8, lines 1 to 14, Papai only recites the well-known fact that there are known two basic types of wetting agents, that are those of the anionic type and those of the non-ionic type (in addition there are also known cationic and betainic types). There is no teaching in Papai that relates those of non-ionic type with the concentrates of Papai and therefore there is no disclosure in Papai to use non-ionic wetting agents in the concentration as presently claimed in a concentrate as presently claimed. In place of this Papai teaches on column 8, lines 14 to 16, that anionic surfactants are the most useful wetting agents for his concentrates and those anionic surfactants are also used in the examples.

Papai uses the sulfate ion containing CD3 in the examples, whereas present claim 9

relates to a low sulphate concentration; the concentrates according to Papai may contain a solid precipitation (see above), whereas present claims 10 to 12 and 15 exclude solid precipitation; and the concentrate according to Papai has to be multi-phase, whereas the applicants' concentrate can according to claim 13 and 16 also be single-phase. In addition, Papai does not disclose the concentrate as part of a processing chemicals pack to refill a processing machine according to present claim 14.

Surprisingly the present invention has the advantages to achieve a concentrate that is stable at low temperatures and gives no precipitation during storage even if an optical brightener is contained; that when used in diluted form for colour development does not lead by carry-over to a precipitation of optical brightener in the following bleach fixing bath; that considerably improves the runout behavior of the concentrate out of the bottle and thereby facilitates the disposal; and that dramatically reduced the soiling of processing equipment with automatic docking procedure. For the above reasons, this rejection should be withdrawn.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 03-2775, under Order No. 07244-00135-US from which the undersigned is authorized to draw.

Respectfully submitted,

By

Ashley I. Pezzner

Registration No.: 35,646

CONNOLLY BOVE LODGE & HUTZ LLP

1007 North Orange Street

P.O. Box 2207

Wilmington, Delaware 19899

(302) 658-9141

(302) 658-5614 (Fax)

Attorney for Applicant